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Supreme Court of the United States

OCTOBER TERM 1946

No. 433

CECIL WELLS - - - - - **Petitioner**

vs.

COMMONWEALTH OF KENTUCKY - **Respondent**

**Statement Opposing Jurisdiction and
Motion to Dismiss
Petition for Writ of Certiorari**

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STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS
PETITION FOR WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

STATEMENT

Respondent, Commonwealth of Kentucky, files this its statement in opposition to the petition of defendant Cecil Wells for writ of certiorari to the Court of Appeals of Kentucky and his brief in support of that petition. So that this court might have a clear idea of the steps taken, we briefly restate the facts.

Petitioner Cecil Wells was indicted for murder at the October 1944 term of the Madison Circuit Court and, after indictment, entered a motion for bail. His motion for bail was overruled on October 27, 1944, and on November 28, 1944, Wells instituted a habeas corpus proceeding against

the Madison County jailer, alleging that, according to Section 16 of the Kentucky Constitution, which reads in part as follows,

“All prisoners shall be bailable by sufficient securities, unless for capital offenses when the proof is evident or the presumption great * * *,”

he was entitled to bail although he was charged with a capital offense. After hearing, the Madison Circuit Judge denied the writ and dismissed the action, from which Wells appealed to the Court of Appeals of Kentucky. That court, on December 15, 1944, in the case of Wells v. Dunn, Jailer, reported in 299 Ky. 51, 184 S. W. (2d) 223, sustained the judgment of the lower court on the ground that the trial judge did not abuse the discretion lodged in him under the State Constitution.

The case then went on to trial on its merits and on February 12, 1946, Wells was convicted of manslaughter and sentenced to five years imprisonment. From this judgment also Wells appealed to the Court of Appeals of Kentucky. As in the case of the appeal from the habeas corpus ruling, the Court of Appeals of Kentucky affirmed the judgment of the Madison Circuit Court, which decision is reported as Wells v. Commonwealth, 302 Ky. 15, 193 S. W. (2) 645.

THE SUPREME COURT OF THE UNITED STATES WILL NOT CONSIDER ANY CONSTITUTIONAL QUESTIONS NOT FIRST PRESENTED AND PASSED ON BY THE HIGHEST COURT OF THE STATE.

When Wells appealed to the Kentucky Court of Appeals from the judgment of the Madison Circuit Court finding him guilty of the offense of manslaughter, he listed three grounds for reversal, each of which was discussed by the Court of Appeals in its decision. As dis-

closed by the opinion of the Court of Appeals of Kentucky, speaking through Judge Eugene Siler, that court had before it "as grounds for reversal of the judgment of the trial court * * * (1) there should be a directed verdict of acquittal and that (2) the voluntary manslaughter instruction given by the trial court was erroneous and that (3) the rulings of the trial court on admission and rejection of evidence were erroneous." The Court of Appeals concluded that "a search of the record discloses no reversible errors committed against his substantial rights upon this trial." It is from this judgment of the Kentucky Court of Appeals that Wells now seeks relief. He has filed the petition for a writ of certiorari from this court to the Court of Appeals of Kentucky to revoke the judgment of that court, which was rendered on January 22, 1946. In support of his petition for writ of certiorari, and as a basis of the jurisdiction of this court, Petitioner asserts that two errors have been committed:

1. The trial court failed to have counsel ask questions more slowly, so that the court stenographer was unable to take down all the answers and that the official transcript, when finally prepared, was incomplete. This was declared to be in violation of the 5th Amendment to the United States Constitution (Pages 21, 22, Petitioner's Brief).
2. The method prescribed by KRS 29.070 for the selection of petit jurors, and actually followed in this case, violated the 5th and 14th Amendments to the United States Constitution (Pages 22 to 29, Petitioner's Brief).

A comparison of the objections listed in the Kentucky courts with those raised in this court will reveal indisputable disparity. Wells did not list in the Madison Circuit Court or in the Kentucky Court of Appeals those objections which he raises here now.

This court has often stated that for it to consider any federal question in any case brought here from a state court, the federal question must have been presented first to the state court and action must have been taken on that question in the state court. If a federal question is brought up for the first time in this court after an opportunity has arisen to bring it up in the state court, then this court is without jurisdiction to pass on those questions.

This point has long been established as a law of rule and practice.

In the 1926 case of *Whitney v. California*, 274 U. S. 357, 47 Sup. Ct. 641, 71 Law Ed. 1095, this court made the following statements:

"We proceed to the determination, upon the merits, of the constitutional question considered and passed upon by the Court of Appeal. Of course our review is to be confined to that question, since it does not appear either from the order of the Court of Appeal or from the record otherwise, that any other federal question was presented not either expressly or necessarily decided by that court. *National Bank v. Commonwealth*, 9 Wall. 353, 363; *Edwards v. Elliott*, 21 Wall. 532, 557; *Dewey v. Des Moines*, 173 U. S. 193, 200; *Keokuk and Hamilton Bridge Company v. Ill.* 175 U. S. 626, 633; *Capital City Dairy Co. v. Ohio*, 183 U. S. 238, 248; *Havie v. Rice*, 204 U. S. 291, 301; *Selover, Bates & Co. v. Walsh*, 226 U. S. 112, 126. *Mo. Pac. Ry. v. Coal Co.* 256 U. S. 134, 135. It is not enough that there may be somewhere hidden in the record a question which, if it had been raised, would have been of a federal nature. *Dewey v. Des Moines*, supra, 199; *Keokuk and Hamilton Bridge Co. v. Ill.*, supra, 534. And this necessarily excludes from our consideration a question sought to be raised for the first time by the assignments of error here * * *."

Similar views were expressed in the 1929 case of *White River Lumber Company v. State of Arkansas, ex rel. Applegate*, 279 U. S. 692, 49 Sup. Ct. 457, 73 Law Ed. 903 (rehearing denied, 50 Sup. Ct. 78):

"It does not appear, however, from the record that this constitutional question was presented in or passed upon by the Supreme Court of the state; and as it was sought to raise this question for the first time by assignments of error in this court, it is necessarily excluded from our consideration."

It is not clear to us whether or not Petitioner Wells is listing as a basis for jurisdiction of this court the argument that because he had been denied bail in the trial court he had been deprived of his constitutional right. His brief mentions this point in only two places:

(1) "That he took an appeal from the ruling of the Honorable Wm. J. Baxter, to the Court of Appeals, which affirmed the judgment of the Madison Circuit Court, denying his petition for bail; That the action of both courts was in the opinion of your petitioner illegal, arbitrary, capricious and in violation of his constitutional rights to bail; That he was confined in jail in Richmond, Madison County, Kentucky until after his trial; That his case was set for trial on Monday, February 12th., 1945; That by reason of illegal restraint he was unable to properly prepare his case for trial, February 12th., 1945." (Page 2, Petitioner's Brief).

(2) "The defendant was tried by a jury of Madison County citizens selected in the manner detailed in part

"B" of this brief February 12, 1945 he was unable to get out and talk to his witnesses or prepare his proof in the case.

"Your petitioner contends that he was deprived of his liberty under section 14 of the Constitution of the United States; that on account of his being unable to talk to his witnesses and prepare his evidence, he was convicted of voluntary manslaughter on trial and was sentenced to the penitentiary for a period of five years." (Page 20, Petitioner's brief).

Petitioner cites no authority for his contention that refusal of bail in the case of a capital offense when, under the State Constitution as interpreted by a state Court of Appeals, a court is given discretion on that question, deprives a defendant of his constitutional rights. Nevertheless, we have searched the record (Case No. 69352 in the office of the Clerk of the Kentucky Court of Appeals) and the decision of the case of *Wells v. Dunn, Jailer*, supra, in which judgment of the lower court denying bail was sustained, and fail to find that Wells at any time raised the federal issue. Never did he allege that a right guaranteed him by the Constitution of the United States had been denied him. His argument has been based entirely on Section 16 of the Constitution of Kentucky, part of which we have quoted above.

This court has long followed the rule of accepting as authoritative the interpretations of the highest courts in the various states concerning their own Constitutions. Those interpretations, when not involving a federal question, are not overturned by this court. That principle is stated in 14 Am. Jur., "Courts," Section 99, as follows:

"Upon the construction of the Constitution and laws of a state, the United States courts, as a general rule, have always followed the decision of the highest court of the state unless they conflict with or impair the efficacy of some principle of the Federal Constitution or the Federal statutes. The United States Supreme Court is not authorized to inquire into the grounds

and reasons on which the Supreme Court of a state proceed in its construction of the statutes and Constitution of that state."

Citations supporting this principle are numerous and we think only one will suffice at this time. According to *Highland Farms Dairy v. Agnew*, (1937), 300 U. S. 608, 57 Sup. Ct. 549, 81 Law Ed. 835,

"A judgment by the highest court of a state as to the meaning and effect of its own constitution is decisive and controlling everywhere."

In the Petitioner's application for bail, the Kentucky Court of Appeals rendered a judgment as to the effect of Section 16 of the Kentucky Constitution on Petitioner Cecil Wells and his application for bail. The Kentucky court discussed no Federal question and for aught that appears in the record, no such question was presented to that court. Petitioner Wells, therefore, may not raise in this court for the first time a contention that denial of bail by the Madison Circuit Court violated the rights guaranteed him by the 14th Amendment.

MOTION TO DISMISS PETITION FOR WRIT OF CERTIORARI

Because we are of the opinion that the Supreme Court of the United States has no jurisdiction, respondent respectfully submits this statement and moves the court to dismiss the petition of Cecil Wells for writ of certiorari.

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